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**IN THE  
COURT OF APPEALS OF INDIANA**

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DANIEL HAMPTON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0609-CR-504
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Tanya Walton Pratt, Judge  
Cause No. 49G01-0606-FB-106635

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**April 3, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Daniel Hampton was convicted of theft<sup>1</sup> as a Class D felony after a bench trial. He appeals raising one issue, which we restate as whether sufficient evidence was presented to support his conviction.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On June 9, 2006, Minnefer Mernahkem's next-door neighbor noticed some activity at Mernahkem's home. The neighbor saw a blue truck pull into the driveway of Mernahkem's home and observed two men, who were later identified as Hampton and Travis Smith, exit the truck. Hampton wiggled the knob on the front door of Mernahkem's home, and when the door did not open, he went around to the back of the home. A few minutes later, the neighbor saw Hampton and Smith carry a refrigerator down the front steps of Mernahkem's home and load it into the back of the truck. The neighbor then called the police and gave them a description of the men and the truck. An officer with the Indianapolis Police Department responded to the dispatch and stopped Hampton and Smith a short distance from Mernahkem's home after observing them pull out of the driveway.

The neighbor also called Mernahkem, who arrived home, and identified the refrigerator in the back of the truck as his. At that time, Mernahkem told the police that he did not know Hampton and Smith and that they did not have permission to take anything from his home. Mernahkem accompanied the police officer to the back door of his home and discovered that the door had been broken open and that the dead bolt was lying on the mat outside of the door. Mernahkem had been in the home earlier that day, and the doors and

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<sup>1</sup> See IC 35-43-4-2.

locks were all in good condition. Inside the home, Mernahkem and the officer observed the water line to the refrigerator had been cut and water was running out onto the floor. Water had soaked through the floor and damaged the ceiling in the basement.

On June 13, 2006, the State charged Hampton with burglary as a Class B felony and theft as a Class D felony. A bench trial was held on August 17, 2006. At the bench trial, Hampton testified that he and Smith did not steal the refrigerator and that he had purchased it for \$40.00 from a guy named E.J., who was Mernahkem's brother. *Tr.* at 57. He stated that E.J. had approached him at a gas station and offered to sell him a refrigerator for \$75.00. *Id.* Hampton told E.J. that he only had \$40.00, which E.J. accepted. *Id.* at 59. Hampton and Smith then proceeded to Mernahkem's home and loaded the refrigerator onto the truck. The trial court found Hampton guilty of theft as a Class D felony and sentenced him to one year incarceration. Hampton now appeals.

### **DISCUSSION AND DECISION**

Our standard of review for sufficiency claims is well settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Dickenson v. State*, 835 N.E.2d 542, 551 (Ind. Ct. App. 2005), *trans. denied*. We will consider only the evidence most favorable to the judgment together with the reasonable inferences to be drawn therefrom. *Id.*; *Robinson v. State*, 835 N.E.2d 518, 523 (Ind. Ct. App. 2005). We will affirm the conviction if there is sufficient probative evidence to support the judgment of the trier of fact. *Dickenson*, 835 N.E.2d at 552; *Robinson*, 835 N.E.2d at 523. In order to convict Hampton of theft as a Class D felony, the State was required to prove that he knowingly or intentionally exerted unauthorized control over property of another person, with the intent to deprive the other

person of any part of its value or use. IC 35-43-4-2.

Hampton argues that insufficient evidence was presented to support his conviction for theft because he and Smith did not knowingly exert unauthorized control over the refrigerator. He contends this is because he purchased the refrigerator from E.J., who he thought was the owner of the home and refrigerator. “A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” IC 35-41-2-2(b). Hampton claims that there was not a high probability that his control over the refrigerator, under the circumstances as he knew them, was unauthorized, and therefore, there was not sufficient evidence to support his conviction. Hampton’s argument is essentially a request for this court to reweigh the evidence, which we cannot do on review. *Dickenson*, 835 N.E.2d at 551.

The evidence most favorable to the judgment shows that Mernahkem’s next-door neighbor saw both Hampton and Smith drive up together in the blue truck, but did not see Mernahkem’s brother at the home.<sup>2</sup> Hampton was then observed wiggling the knob on the front door, and when he could not open that door, he went to the back of the house. After only a few minutes, the neighbor next saw Hampton and Smith carrying the refrigerator down the front steps and loading it onto the truck. When Mernahkem arrived at his home, he discovered that the back door had been broken in, with the dead bolt lying on the ground outside. Inside, the refrigerator was missing, and had been moved in such a hurry that the water line had been cut without turning the water off, which had caused water to leak into the

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<sup>2</sup> The neighbor testified that he had previously met Mernahkem’s brother, but did not see him on the day of this incident. *Tr.* at 19, 20.

basement.

Additionally, even if the trial court believed that E.J. had offered to sell Hampton the refrigerator for \$40.00, it was not unreasonable for the trial court to conclude that there was a high probability that Hampton knew the sale was not legitimate. Hampton testified that he had previously purchased a used refrigerator similar to the one removed from Mernahkem's home at a garage sale for \$75.00. *Tr.* at 62-63. It was reasonable for the trial court to conclude that Hampton knew that the sale was not legitimate when he was approached by a man at a gas station regarding the sale of a refrigerator and when he knew he was only paying about half of what he had previously paid for a comparable refrigerator. We conclude that the evidence presented was sufficient to support Hampton's conviction for theft.

Affirmed.

DARDEN, J., and MATHIAS, J., concur.